IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 20189 of 2006(C)

PETITIONER:

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1. ADVOCATE V.K. RAJU, PRESIDENT,
   MURUKKUMPUZHA SERVICE CO-OPERATIVE BANK LTD.,
   NO.T.292, MURUKKUMPUZHA, TRIVANDRUM.

2. MURUKKUMPUZHA SERVICE CO-OPERATIAVE
   BANK LIMITED NO.T.292, MURUKKUMPUZHA,
   TRIVANDRUM, REP.BY ITS SECRETARY.

BY ADV. V.G.ARUN

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES (GENERAL) TRIVANDRUM.

2. THE ASSISTANT REGISTRAR OF
   CO-OPERATIVE SOCIETIES (GENERAL) TRIVANDRUM.

3. STATE OF KERALA, REPRESENTED BY
   THE SECRETARY TO GOVT., CO-OPERATION DEPARTMENT
   TRIVANDRUM.

4. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES (AUDIT) TRIVANDRUM.

5. THE GENERAL MANAGER, ICDP TRIVANDRUM
   DISTRICT, TRIVANDRUM DISTRICT CO-OP.
   BANK, FORT, TRIVANDRUM.

BY ADV. SRI.J.S.AJITHKUMAR
SPECIAL GOVERNMENT PLEADER, SMT.A.G.ANITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/03/2007, ALONG WITH WPC NO. 29097 OF 2006 WPC NO. 30961 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:-

EXT.P1 TRUE COPY OF THE LIST SHOWING THE AWARD PASSED AND AMOUNT TO BE REALISED

EXT.P2 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER BANK BEFORE THE 1ST RESPONDENT

EXT.P3 TRUE COPY OF THE LIST SHOWING THE CASES WHERE EXECUTION PETITIONS HAVE BEEN FILED

EXT.P4 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER BANK FILED BEFORE THE 1ST RESPONDENT DATED 08/05/2005

EXT.P5 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER BANK FILED BEFORE THE 5TH RESPONDENT DATED 08/05/2005

EXT.P6 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER BANK FILED BEFORE THE 4TH RESPONDENT DATED 10/05/2005

EXT.P7 TRUE COPY OF G.O.(MS) NO.41/95/CO-OP DATED 13/03/1995

EXT.P8 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER BANK FILED BEFORE THE 1ST RESPONDENT DATED 08/05/2005.

\\TRUE COPY//

J.M.JAMES, J.

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W.P.(C) Nos. 20189/2006, 29097/2006
and 30961/2006

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Dated this the 12th day of March, 2007

J U D G M E N T

The President representing Murukkumpuzha Service Co-operative Bank Ltd. No.T.292, the first petitioner, had preferred W.P.(C) No.20189/2006, praying, inter alia, to direct the first respondent, the Joint Registrar of Co-operative Societies, Thiruvananthapuram, to sanction financial assistance for the revival of the second petitioner bank, as per Exhibit P7 order dated 13/02/1995 of the Co-operative Department; to direct the General Manager, I.C.D.P, to accept the proposals submitted by the petitioner, as per Exhibit P5 and; the Joint Registrar (Audit) to take up the audit of the accounts of the bank.

2. W.P.(C) No.29097/2006 is preferred by a depositor, who made a fixed deposit of Rs.1,50,000/-, which has not been refunded, despite the expiry of the maturity period, hence praying that the said amount may be released to her.

3. W.P.(C) No.30961/2006 is preferred by the members of the Murukkumpuzha Service Co-operative Bank.

They have made fixed deposits with the bank. The fixed deposit amounts are not being refunded even after the maturity, as in the case of the writ petitioner in W.P(C) No.29097/2006. Therefore, they pray, inter alia, that their maturity deposits may be released, as per the valid relevant deposit receipts; to direct the Joint Registrar, the second respondent, to take action under the relevant provisions of the Kerala Co-operative Societies Act, in short 'the Act', and the Kerala Co-operative Societies Rules, in short 'the Rules', and, also take further actions required to protect the interest of the depositors and the members of the bank.

4. When the writ petitions came up repeatedly, it had been submitted by the Special Government Pleader that actions had been taken and enquiries are going on, against the members who have been dealing with the affairs of the bank in the relevant period. Enquiries were also held as to the mode of 'conduct', of the business of the bank and the appropriation of the amounts of the depositors as well as the members. However, no documents are produced, to show the above actions, despite

the direction to that effect. Therefore, the Special Government Pleader was directed to get instructions and file a statement on the next posting date. Accordingly, a statement is seen filed, which reveals that there is a mismanagement of an amount of Rs.4,04,66,602.57. It is further stated that, basing on the enquiry report of the Joint Registrar, Thiruvananthapuram, a request had been made before the District Superintendent of Police (Rural), Thiruvananthapuram, in the prescribed proforma, for proceeding against the wrong doers through criminal action. The inspection report was also sent to the Vigilance and Anti-corruption Bureau, Thiruvananthapuram, for further action. An enquiry under Section 68(1) of the Act, is being carried out, by one of the Assistant Registrars (General), Thiruvananthapuram. The same is in progress and would be finalised shortly. An inspection under Section 66 of the Act, about the affairs of the bank, with special reference to the non-refund of the deposit to the depositors have also been done. It is revealed from the interim report submitted that an amount of Rs.2,53,44,153.10 is due to the bank. The outstanding deposit to be paid by the bank

comes to Rs.4,04,66,602.57. The borrowing of the bank from different other agents like General Banking and K.C.C loan comes to Rs.1,33,12,658.00. It is also further stated that the outstanding deposit and loan difference is Rs.2,84,35,107.47. Apart from the above, there are 35 A.R.C pending, as on January, 2007. Only five cases were disposed of. The remaining 30 cases are still on the process of finalisation. There are 15 cases of agricultural loans and 39 cases of non-agricultural loans as on January, 2007, pending on the execution side. The bank had also sent demand notices directly to 29 E.P cases, which comes to a tune of Rs.16,63,381.00, in which, some of the loanees are making part payments. However, in the statement filed, it is concluded as follows:-

> "So the only remedy to pay back all these amount is the liquidation of the society. If this Hon'ble Court directs supercession of the present committee, this respondent is ready to make all efforts to realise the outstanding amount and pay the same to depositors."

The learned counsel appearing for the writ petitioners, therefore, submitted that liquidation of the Society is

not the answer and that will not enable the Society to collect all the outstanding dues to it. It is further submitted that by liquidation of the Society, the persons who mismanaged and misappropriated the amount may also escape. It is hence prayed that the present committee may be superceded and the Co-operative Bank may be taken over by the new committee as per the provisions of the Act and Rules, thereunder.

5. After hearing both sides and considering the details given in the statement of the learned Special Government Pleader, I am of the view that liquidation of the Society will not enable a practical end to the whole matter. The Vigilance and Anti-corruption Bureau as well as the police authorities are enquiring about the various misappropriations, committed by the committee members. An enquiry under Section 68(1) of the Act and also an inspection under Section 66 of the Act are being proceeded with. In such circumstances, it would be appropriate that instead of going for liquidation of the Society, the Joint Registrar of Co-operative Societies, Thiruvananthapuram, shall continue with the enquiry under Section 68(1) of the Act. The

criminal action initiated against the concerned persons as well as the proceedings now pending with the Vigilance and Anti-corruption Bureau, Thiruvananthapuram, shall also be expedited by providing them with necessary materials, records and other statement of accounts required for proceeding against the concerned persons.

6. All out efforts should be made by the Joint Registrar to expedite the disposal of the E.P cases, the ARC matters pending before the Arbitrator and also the realisation of agricultural and non-agricultural loans in a fastest manner, so that the bank will get the amount due to it. On completion of the enquiry and inspection, as stated above, the same shall also be furnished to the Vigilance and Anti-corruption Bureau as well as to the police authorities, so that all those concerned in misappropriating the amount will be proceeded with, according to the law as per the materials that are available with the bank.

7. When the amounts are so realised, as per the procedures and steps that have been directed above, the said amount shall be utilised for the refund of the fixed deposit

amounts to the members, who made fixed deposits, particularly, the writ petitioners in W.P.(C) Nos. 29097/2006 and 30961/2006.

8. The enquiry as well as further proceedings under Section 68 shall be completed within three months from the date of receipt of a copy of this judgment. The Joint Registrar shall hear all concerned and decide whether any proceedings should be issued or orders are to be passed under Section 32 of the Act as well.

9. These writ petitions are disposed of as above.

Post W.P.(C) Nos.29097/2006 and 30961/2006 after three months, for reporting compliance.

(J.M.JAMES)
Judge

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